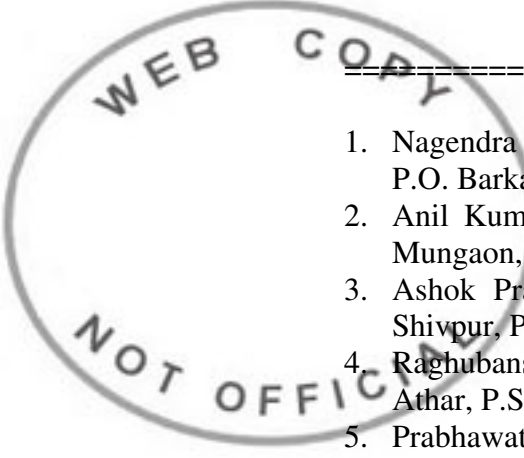
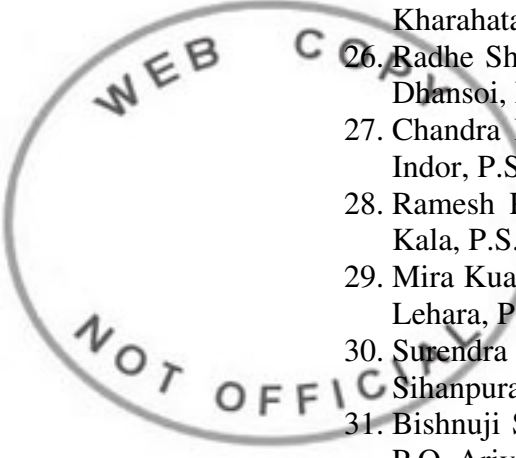


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20707 of 2013

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1. Nagendra Nath Ojha Son Of Late Gunjeshwari Ojha, Resident Of Village + P.O. Barka Singhanpura, P.S. Simari, District Buxar.
 2. Anil Kumar Singh Son Of Alte Baijnath Singh Resident Of Village + P.O. Mungaon, P.S. Koran Sarai, District Buxar
 3. Ashok Prasad Son Of Late Kawaldhari Ram Resident Of Village + P.O. Shivpur, P.S. + District- Buxar.
 4. Raghubansh Mani Pathak Son Of Sri Badrinath Pathak R/O Village + P.O.- Athar, P.S. Koran Sarai, District Buxar.
 5. Prabhawati Dei Wife Of Dalal Prasad R/O Ambedkar Nagar, Sohanipatti, P.S. + District Buxar.
 6. Rani Jainet Marks W/O Emanvel Marks Resident Of Musafirganj, Station Road, P.O. + P.S. + District Buxar.
 7. Raj Mohan Pandey W/O Jagaru Nath Pandey R/O Village Barari, P.O.- Mangraon Sangraon, P.S. Rajpur, District- Buxar.
 8. Ramji Prasad S/O Late Raghunath Sah R/O Village Ghuruhupur, P.O.- Hathilpur, P.S. Brahampur, District Buxar
 9. Sidhnath Prasad Son Of Alte Ram Chandra Rpsad R/O Village + P.O. Mahuar, P.S. Brahampur, District Buxar
 10. Ambika Kuamr Son Of Sri Prem Lal Ram R/O Village + P.O. Sahpur, P.S. Sahpur, District Bhojpur.
 11. Binay Kumar S/O Ayodhaya Prasad R/O Village + P.O. Barki Nanijor P.S. Brahampur, District Buxar.
 12. Harendra Prasad Son Of Tunna Yadav R/O Vilalge Nandpur, P.O.- Balua, P.S. Brahampur, District Buxar.
 13. Ajit Prasad Son Of Indra Deo Prasad Resident Of Village Saraiya, P.O. Bilauti, P.S. Sahpur, District Bhojpur.
 14. Nand Lal Singh Son Of Late Jai Govind Singh Resident Of Vilalge Govindpur, P.O. Keshat, P.S. Nawanagar, District Bhojpur.
 15. Adul Wari Anshari Son Of Abdul Bash R/O Village + P.O. Delwani Mohalla P.S. Dumraon, District, Buxar.
 16. Dinesh Kuamr Choudhary Son Of Sri Ram Dular Choudhary R/O Village Manki, P.O.- Giridhar Baraon, P.S. Barahampur, District Buxar.
 17. Damyanti Devi W/O Kamta Pandey R/O Village Raghunathpur, P.O. Shivpur, P.S. Nawanagar, District Buxar.
 18. Bhim Prasad Son Of Shiv Nath Ram R/O Village + P.O. Rampur, P.S. Nawanagar, District Buxar.
 19. Madalsa Kumari Son Of Prithiwi Nath Pathak Resident Of Vilalge + P.O. Dharauli, P.S. Brahampur, District Buxar
 20. Rajendra Pandey Son Of Sri Ram Pandey Resident Of Village Chuar, P.O. Ataon, P.S. Koransarai, District Buxar.
 21. Jai Prakash Mishra, Son Of Alte Ramanand Mishra, R/O Vilalge + P.O. Kaithi, P.S. Bagen Gola, District Buxar
 22. Awadh Bihari Singh Son Of Late Ram Janam Singh R/O Village + P.O. Dalsagar, P.S. Indsutrial District Buxar
 23. Devendra Kuamr Choubey Son Of Ras Bihari Choubey Resident Of Village Bhakawa, P.O. Basudhar, P.S. Sikraul, District Buxar

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24. Rakesh Kuamr Tripathi, Son Of Sri Atrimuni Tripathi R/O Village + P.O.- Athar, P.S. Koransarai, District Buxar.
 25. Shyam Narayan Ojha Son Of Alte Jaleshwar Ojha R/O Village + P.O. Kharahatarn, P.S. Simri, District Buxar
 26. Radhe Shayam Sahu Son Of Mahesh Prasad R/O Village + P.O. Parsiya, P.S. Dhansoi, District Buxar.
 27. Chandra Deo Singh S/O Sri Ram Gopal Singh R/O Village Fathepur, P.O. Indor, P.S. Itahi, District Buxar
 28. Ramesh Prasad Singh S/O Late Bakhori Singh, R/O Village + P.O. Basaon Kala, P.S. Sikraol, District Buxar
 29. Mira Kuamri Wife Of Daya Shankar Rai Resident Of Village Torni, P.O. Torni Lehara, P.S. Karahagar, District Rohtas.
 30. Surendra Kumar Son Of Si Thakur Prasad Resident Of Vilalge + P.O. Barka Sihanpura, P.S. Simri, District Buxar
 31. Bishnuji Singh Son Of Shayam Sundra Singh Resident Of Vilalge Amthuhah, P.O. Ariyoun, P.S. Krihana Braham, District Buxar.
 32. Surendra Rai Son Of Shiv Narayan Rai Resident Of Vilalge + P.O. Sohanipatti, P.S. Buxar Town, District Buxar
 33. Navin Prakash Son Of Sri Krishna Prasad Resident Of Vilalge + P.O. Kukurha, P.S. Itadhi, District Buxar
 34. Pramod Kumar Son Of Yudu Singh Resident Of Village Nawaih, P.O. Jamdiha, P.S. Akodhigola, District Rohtas.
 35. Dinesh Singh Son Of Late Sukh Bilash Singh Resident Of Vilalge + P.O. Nadaon, P.S.+ District Buxar
 36. Arvind Kumar, Son Of Late Tej Narayan Choudhary Resident Of Village + P.O. Kukudhan, P.S. Itadhi, District Buxar.
 37. Shes Nath Pandey Son Of Late Sri Niwash Pandey Resident Of Village + P.O. Nimaj, P.S. Brahampur, District Buxar.
 38. Sudhir Kumar Gupta Banshidhar Prasad Resdient Of Village + P.O. Nayee Bazar, P.S. + District Buxar.
 39. Ajit Kumar Tiwari, Son Of Sri Bali Ram Tiwari R/O Vijay Nagar, Civil Line P.S. + District Buxar.
 40. Ajay Kuamr Singh Son Of Sri Ram Janam Singh Resident Of Civil Line, P.S. + District Buxar
 41. Pankaj Kuamr Singh Son Of Sri Shivji Singh R/O Village + P.O. Manjhariya, District Buxar

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government Of Bihar, Patna.
3. The Director, Primary Education, Government Of Bihar, Patna.
4. The Regional Deputy Director Of Education, Patna Division, Patna.
5. The District Magistrate, Buxar
6. The Additional Collector, Buxar
7. The Deputy Development Commissioner, Buxar
8. The Nodal Officer Education Cum Dc Lr, Buxar.
9. The District Education Officer, Buxar
10. The District Programme Officer (Establishment), Office Of District Education Officer, Buxar
11. Abhaya Nand Pandey Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

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NOT OFFICIAL
12. Mahesh Rpasad Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

13. Chathu Singh Yadav Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

14. Dhruv Pandey Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

15. Vijay Bahadur Singh Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

16. Samsher Alam Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

17. Ramji Rai Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

18. Bipendra Kumar Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

19. Shailendra Pandey Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

20. Girish Pandey Teacher Of Middle School In The District Of Buxar Through The District Education Officer, Buxar.

.... Respondent/s

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Appearance :	
For the Petitioner/s	: Mr.Vinod Kumar Kanth, Sr. Adv. Mr. Ashutosh Ranjan Pandey, Adv. Mr. Vijay Shankar Upadhyay, Adv.
For the Respondent/s	: Mr. Tej Bahadur Singh, Sr. Adv. Mr. Shashi Priya Pathak, Adv.
For the State	: Mr. Madhukar Krishna Sinha, SC-1 Mr. A.N. Pandey, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 20-04-2016

Heard learned counsel for the parties.

Instead of going on merit of the case, it has emerged in course of argument that while granting promotion, the authority concerned did not follow the due process properly. The Primary School Teachers Promotion Rule, 2011 (hereinafter mentioned as the ‘Rule’) provides in what manner the promotion will be given from matric trained scale to B.A. trained scale and from B.A. trained scale



to the scale of principal. In terms of Rule, the person whatever may be his qualification will enter into service as matric trained scale teacher in Grade-3 and after completion of 12 years, will be given Grade-II pay-scale and similarly Rule-5 provides conditions of promotion, the person will be given Grade-1 on completion of twenty-four years of service and a person who is entitled for promotion to the graduate scale teacher, the benefit will go firstly to the Grade-1, if no person is available in that grade then it will be given to Grade-II and in absence of both the grade, a person, who has completed eight years of service in Grade-III, will be given pay-scale of B.A. Trained scale subject to suitability and availability of the seat. As per Rule, 2011, in first step a composite seniority list of matric trained scale teacher will be prepared and, from that composite list, at the stage of granting B.A. Trained Scale, a separate seniority list for the Science Graduates and Arts Graduates will be prepared and, from that list, the person, as per seniority, will be given promotion in Science Graduate Trained Pay Scale and those who are in Art Graduate will be given B.A. trained pay-scale. Rule-12 deals with in what manner the inter-se seniority will be decided. It has been mentioned that if two persons inter in service in the same grade, seniority will be decided on the date of their entry into the grade and if the date of entry is same, the seniority will be decided on the basis of their date of birth and if the date of birth is



the same then the seniority will be decided on the basis of alphabet. If the alphabet comes earlier will be treated to be senior person. Rule 16 provides that those who are untrained teacher will not be entitled to any promotion. Untrained Teacher will get Grade-III the day he was given trained scale. In the aforesaid manner, the seniority list is to be prepared and promotion would be granted.

From the records, it appears that the separate seniority list of Science and Arts Graduate Teacher was prepared, the District Education Officer, Buxar vide letter dated 25.10.2012, directed the the District Information Science Officer, Buxar to upload the seniority list.

The record does not show that the seniority was ever been uploaded in the website nor the said seniority list was ever circulated for objection. When the promotion was granted to the private respondents on the basis of the said seniority list, there was hue and cry, objections were raised by the petitioners and others claiming that the case of senior has been left out and those juniors stole march over them and they have been given the benefit of B.A. or B.Sc. Trained Pay-Scale. In pursuance thereof, the Collector has constituted a Three Men Committee, given direction to examine the matter in the light of objections raised by the petitioners and other similarly situated persons. In pursuance thereof, the Three Men Committee has



submitted its report dated 29.11.2012 consisting of Deputy Development Commissioner, Senior Deputy Collector and Land Reforms Deputy Collector. The report discloses that the seniority list was not prepared in terms of the Rule, 2011 as well as the seniority list was tinkered and manipulated by Mr. Paswan, the then District Education Officer, thereafter, another District Education Officer, namely, Mr. Ashish Rajan joined the said post. After receipt of the Three Men Committee report, the same was given to the District Education Officer to give his own comment and, thereafter, the Three Men Committee again considered the report and the objections of District Education Officer, gave its own finding (Annexure-15). It appears from its findings, the Three Men Committee gave his final comment showing that the procedure for promotion was not properly followed and the case is of clear cut defect in the preparation of the seniority list which was placed before the Collector, Buxar and the Collector, Buxar has gone into the matter and submitted item wise his own findings, ultimately arrived to the conclusion that the process of selection was not conducted in a proper manner. The report of the Collector was placed before the Director, Education, agreed with the report, which appears from note-sheet attached to the writ application. The matter went to Minister In-charge, from there matter was came back to the Director. The Director, after proper examination, found

some irregularities have been committed, suggested for rectification of those irregularities and those who been wrongly been promoted should be removed and others should not be disturbed.

Learned counsel for the petitioner has submitted that the process of preparation of the seniority list and the method that was adopted for the promotion was not in consonance with the Promotion Rule, 2011. The mandate of law provides that the authority should have prepared the composite list of matric and intermediate trained scale of Grade-3, Grade-2 and Grade-1 and from there they should have prepared separate seniority lists for Science and Arts Graduates and, from that list, seniority-wise promotion was to be given to Graduate Teachers to the next grade which has not been done in the present case whereas counsel for the private respondents submits that though the composite merit list was not prepared but the list of Science and Arts graduate trained teacher has been prepared in terms of seniority reflected in the recommendation of the Public Service Commission.

It is a fact that after the Three Men Committee has found illegality in preparation of the merit list, ultimately the Collector has given a report showing in what manner the illegality has been committed in preparation of the seniority list and the Director, Primary Education himself has found some irregularity has been



committed in promotion but nowhere report of Director shows consideration of three men committee report and final report of Collector. If the Director, Primary Education was of the view that there was some error committed by the Collector in giving its report, he ought to have pointed objectively, giving his clear cut opinion on reports but Director is completely silent about the report of the Three Men Committee Report or the report of the Collector.

In such view of the matter, it will be proper for this Court to give efficacy to the report of the Collector where he has found that wrong method was applied in preparation of Graduate Trained Scale Teacher as well as there was no proper circulation of the seniority list for objection and promotion has been given in a wrong manner.

Be that as it may, this Court is of the view that the respondent authority should have exercised its power properly in preparation of Trained Graduate Teachers seniority list separately. There is no material to show that said seniority list was ever circulated or uploaded in the website, giving at least thirty days for filing objection. It appears that all actions were taken very hurriedly, without following the due process. Accordingly, it is directed the respondent authority would upload the seniority in the website, give thirty days time for objection and after consideration of objections make it final within thirty days, after preparation of final seniority list

of Science and Arts Graduate Trained Teachers, give them promotion in accordance with law.

While finalizing the seniority list as well as consequential promotion, the respondent authority will follow the 2011 Rules and the executive instructions issued from time to time.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.05.2016
Transmission Date	